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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/792175
Filing Date: March 03, 2004
Appellant(s): FINKE-ANLAUFF, ANDREA et al

Richard D. Emery
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/30/08 appealing from the Office action

mailed 09/12//2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The amendment after final rejection filed on 12/12/07 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

WO 02/057959 A2   Rothmuller et al   07-2002

(9) Grounds of Rejection

Claims 1, 21, 24, and 35 of the instant application (101792175) are provisionally

rejected on the ground of nonstatutory obviousness-type double patenting as being

unpatentable over claims 1, 5, 7, 11, and 13 of copending Application No. 10/715,162.

Claims 1, 2, 4-26, and 28-36 are rejected under 35 U.S.C. 102(b) as being

anticipated by <u>Rothmuller et </u>al (hereinafter Rothmuller) (International Pub No. WO

02/057959 A2).

The detailed rejections are as follows:

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created
doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the
unjustified or improper timewise extension of the "right to exclude" granted by a patent
and to prevent possible harassment by multiple assignees. A nonstatutory
obviousness-type double patenting rejection is appropriate where the conflicting claims
are not identical, but at least one examined application claim is not patentably distinct
from the reference claim(s) because the examined application claim is either anticipated
by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140
F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29
USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.
1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422
F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163
USPQ 644 (CCPA 1969).
A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d)
may be used to overcome an actual or provisional rejection based on a nonstatutory
double patenting ground provided the conflicting application or patent either is shown to
be commonly owned with this application, or claims an invention made as a result of
activities undertaken within the scope of a joint research agreement.
Effective January 1, 1994, a registered attorney or agent of record may sign a
terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with
37 CFR 3.73(b).

Claims 1, 21, 24, and 35 of the instant application (101792175) are provisionally

rejected on the ground of nonstatutory obviousness-type double patenting as being

unpatentable over claims 1, 5, 7, 11, and 13 of copending Application No. 10/715,162.

Although the conflicting claims are not identical, they are not patentably distinct from

each other for the reason set forth below.

Claims 1, 21, 24, and 35 of instant application 10/792,175 are essentially the

same as claims 1, 5, 7, 11, and 13 of copending application 10/715,162 except that

claims the instant application recites "timeline view that is presented in combination with

media view and provides access to media files" wherein the claims of the copending

application recite "time bar that divides time segments having a size."

It would have been obvious to a person of ordinary skill in art at the time of the

invention was made to modify the time bar to include timeline view with the motivation

being to provide a photo view which is associated with the time bar.

This is a <u>provisional</u> obviousness-type double patenting rejection because the

conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-26, and 28-36 are rejected under 35 U.S.C. 102(b) as being

anticipated by <u>Rothmuller et </u>al (hereinafter Rothmuller) (International Pub No. WO

02/057959 A2).

Claim 1: Rothmuller discloses a product for providing access to media files on a

digital device, the product comprising a computer readable storage medium; and

computer-readable program instructions embodied in the computer-readable storage

medium, the computer-readable program instructions comprising: first instructions for

generating a media view that provides access to at least one digital media file and

associates the at least one digital media files with a period of time (Fig. 1 and Page 2,

lines 13-19); and second instructions for generating a timeline view that is presented in

combination with the media view and provides access to the at least one digital media

file according to periods of time defined in the timeline (Fig. 1, Page 7 lines 27-31 &

page 8 lines 1-14) and according to events represented in the timeline (page 3, lines 5-

9) (page 5 lines 18-25) (Fig. 3).

Claim 2: Rothmuller discloses the product of claim 1, wherein the first instructions

for generating the media view further associate the at least one digital media file with

event information (page 6, lines 20-25).

Claim 4: Rothmuller discloses the product of claim 1, wherein the first instructions

associate the least one digital media file with a period of time that is defined by

metadata associated with the at least one digital media file (page 7 lines 4-15).

Claim 5: Rothmuller discloses the product of claim 1, wherein the first instructions

further include instructions for generating title information for the at least one digital

media file (page 6 lines 9-13).

Claim 6: Rothmuller discloses the product of claim 5, wherein the instructions for generating title information include instructions for displaying, in the media view, the title information in conjunction with the at least one digital media file (page 12 lines 4-9).

Claim 7: Rothmuller discloses the product of claim 5, wherein the first instructions for generating title information for the at least one digital media file include instructions for defining the title information by metadata associated with the at least one media file (page 12 lines 4-13).

Claim 8: Rothmuller discloses the product of claim 1, wherein the first instructions include instructions for generating group title information for a plurality of digital media files having related metadata information (page 6 lines 9-20).

Claim 9: Rothmuller discloses the product of claim 8, wherein the instructions for generating group title information include instructions for displaying, in the media view, the group title information in conjunction with the plurality of digital media files (page 12 lines 4-13).

Claim 10: Rothmuller discloses the product of claim 8, wherein the instructions for generating group title information for the plurality of digital media files include instructions for defining the group title information by comparable metadata associated with the plurality of digital media files (page 6 lines 3-14).

Claim 11: Rothmuller discloses the product of claim 1, wherein the second instructions for generating the timeline view include instructions for generating a scrollable timeline that provides for locating periods of time by scrolling the timeline (Fig. 3, page 7 lines 27-31).

Claim 12: Rothmuller discloses the product of claim 11, wherein the second instructions for generating the timeline view include instructions for generating a scrollable timeline that is scrollable in a horizontal manner (Fig. 3, page 7 lines 27-31).

Claim 13: Rothmuller discloses the product of claim 11, wherein the second instructions for generating the timeline view include instructions for generating a scrollable timeline that is scrollable in a vertical manner (Fig. 3, page 8 lines 27-31).

Claim 14: Rothmuller discloses the product of claim 1, wherein the first instructions for generating the media view include instructions for generating a scrollable media view for locating media files by scrolling the media view (Fig. 1, which shows the time handle/arrows to scroll the time period or media view).

Claim 15: Rothmuller discloses the product of claim 14, wherein the first instructions for generating the media view include instructions for generating a scrollable media view that is scrollable in a horizontal manner (Fig. 3, page 7 lines 27-31).

Claim 16: Rothmuller discloses the product of claim 14, wherein the first instructions for generating the media view include instructions for generating a scrollable media view that is scrollable in a vertical manner (Fig. 3, page 8 lines 27-31).

Claim 17: Rothmuller discloses the product of claim 1, wherein the first instructions for generating the media view and the second instructions for generating a timeline view include instructions for generating a scrollable media view and a scrollable timeline view that provide for locating one or more media files by scrolling (Fig. 1, which shows the time handle/arrows to scroll the time period or media files).

Claim 18: Rothmuller discloses the product of claim 17, wherein the first instructions for generating the media view and the second instructions for generating a timeline view include instructions for scrolling the media view in a horizontal manner and scrolling the timeline view in a horizontal manner (Fig. 1 and Fig. 3).

Claim 19: Rothmuller discloses the product of claim 17, wherein the first instructions for generating the media view and the second instructions for generating a timeline view include instructions for scrolling the media view in a vertical manner and scrolling the timeline view in a vertical manner (Page 8, lines 27-31 and Page 9, lines 1-14).

Claim 20: Rothmuller discloses the product of claim 1, wherein the second instructions for generating a timeline view include instructions for generating a timeline in the form of a time bar (Fig. 1, which shows the time handle/arrows to scroll the time bar or media files).

Claim 21: Rothmuller discloses the product of claim 1, wherein the second instructions for generating a timeline view include instructions for generating a time handle that provides for the timeline to be scrolled (Fig. 1 and Fig. 3, which shows the time handle to scroll the time periods).

Claim 22: Rothmuller discloses the product of claim 1, further comprising third instructions for searching the media view in terms of a period of time (Fig. 1, which shows the time handle to search the media view in terms of the time periods).

Claim 23: Rothmuller discloses the product of claim 1, further comprising third instructions for searching the media view in terms of any combination of metadata

information (Fig. 1).

Claim 24: Rothmuller discloses the product of claim 1, wherein the first instructions for generating a media view include instructions for adjusting the area of the periods of time within the media view according to the amount of digital media files in the period of time (page 8, lines 14-21).

Claim 25: Rothmuller discloses the product of claim 24, wherein the first instructions for adjusting the area of the periods of time include instructions for adjusting the area of the period of time view so that all of the media files within a period of time are viewable within a display (page 8, lines 4-13).

Claim 26: Rothmuller discloses a method for digital media management in a digital device, the method comprising: receiving, at the digital device, a digital media file having metadata associated with the digital media file (page 6, lines 20-27); transmitting the file to a media diary application that associates the digital media file with a period in time based on the metadata (Page 4, lines 16-26); providing a user access to the digital media file via a media view that displays a representation of the digital media file in connection with the period of time (Page 3, lines 1-9), and providing the user the ability to locate digital media files within the media view by scrolling a timeline that is displayed in conjunction with the media view (Page 3, lines 1-9 and Fig. 1).

Claim 28: Rothmuller discloses the method of claim 26, further comprising providing a user the ability to locate digital media files within the media view by movement of a time handle that is displayed in conjunction with the media view (Fig. 1, which shows the time handle to search the media view in terms of the time periods).

Claim 29: Rothmuller discloses a method for defining media file representation in

a media view of a media diary application, the method comprising: receiving a media file

having associated metadata information (page 6, lines 20-27); determining a manner in

which the media file will be represented in a media view of the media diary (Fig. 1); and

individually presenting the media file as a media file representation in a date column of

the media view in accordance with the determination of the manner of representation

(page 2, lines 12-20) (page 5, lines 5-9) (Page 4, lines 16-18).

Claim 30: Rothmuller discloses the method of claim 29, wherein determining the

manner in which the media file will be represented in a media view of the media diary

further comprises determining the size of a thumbnail representing the media file (Page

11, lines 12-20).

Claim 31: Rothmuller discloses the method of claim 29, wherein determining the

manner in which the media file will be represented in a media view of the media diary

further comprises determining a size of the date column within which the representation

will reside (Page 8, Lines 27-31).

Claim 32: Rothmuller discloses the method of claim 29, wherein determining the

manner in which the media file will be represented in a media view of the media diary

further comprises determining the size of the media view in proportion to the overall

viewing area (Page 11, lines 12-20).

Claim 33: Rothmuller discloses the method of claim 29, wherein determining the

manner in which the media file will be represented in a media view of the media diary

further comprises determining a quantity of the media files represented in a date column

(Fig. 1, Page 8 lines 27-31 and Page 9 lines 1-3).

Claim 34: Rothmuller discloses the method of claim 29, further comprising

providing the user the ability to locate a media file within the media view by scrolling the

media view (Page 3, lines 1-9).

Claim 35: Rothmuller discloses an apparatus comprising: a processing unit that

executes computer-readable program instructions for accessing media files, the

computer-readable program instructions comprising: first instructions for generating a

media view that provides access to at least one digital media file and associates the at

least one digital media file with a period of time (Fig. 1 and Page 2, Lines 13-19), and

second instructions for generating a timeline view that is presented in combination with

the media view and provides access to the at least one digital media file according to

periods of time defined in the timeline (Fig. 1, Page 7 lines 27-31 & page 8 lines 1-14)

and according to events represented in the timeline (page 3, lines 5-9) (page 5 lines 18-

25) (Fig. 3).

Claim 36: Rothmuller discloses an apparatus according to claim 35, further

comprising a display in communication with the processing unit that presents,

independently, the media view and the timeline view (Fig. 1, which shows the combined

view of the media view and the timeline view).

(10) Response to Argument

A. Arguments Regarding the Rejections of Independent Claims 1 and 35:

Appellant argues "Applicants respectfully maintain that Rothmuller does not

disclose events that are "represented in a timeline." The examiner respectfully

disagrees. The specification has some discussions on event, however, the only part that shows the relationship of event and timeline is "For the sake of brevity and clarity, the invention defines "period of time" to include both moment of time and an event associated with a period of time" (spec., lines 11-13 of page 6).The drawing does not show how an event is represented in the timeline. Fig. 2 shows timeline view 200 having time bar 210 with dates. There is no showing of how an event is represented in the timeline. Although there are events represented right below the timeline view in Fig. 2, those events are represented in the media view and not represented in the timeline view (spec. lines 6-16 of page 13).Therefore, in view of Appellant's disclosure, the claimed "....**events represented in the timeline**" are indeed just **events associated with a period of time** or **events associated with the timeline.**

As such the Examiner respectfully submits that Rothmuller teaches"..... event represented with the timeline" (i.e. associated with a period of time, in view of the above interpretation) since events (showed by tags) in Rothmuller can be categorized by date (page 5, lines 18-25) and these events (tags) can be retrieved via timeline (page 8, lines 4-14).

B. Arguments Regarding the Rejections of Independent Claim 26:

Appellant argues that Rothmuller fails to teach "providing the user the ability to locate digital media files within the media view by scrolling a timeline that is displayed in conjunction with the media view" since, according to Appellant, Rothmuller does not discuss movement of the timeline itself" and that "Rothmuller discloses only a timeline that includes "time bands" (i. e., markers on a timeline) that can be moved along the

timeline to limit the temporal range of consideration when searching for objects in a database, and does not teach or suggest a timeline that can be scrolled in order to locate media files" The Examiner respectfully disagrees.

First of all, Rothmuller teaches that photos can be arranged based on associating temporal metadata, i.e. chronological order (page 7, lines 27-29).

Second of all, Rothmuller teaches performing a search will result in displaying "best match" photos, "close match" photos, and "no match" photos (page 7, lines 4-15).

Third of all, Rothmuller teaches timeline 250 can be used as a search criteria (line 31 of page 7 to line 1 of page 8) to find all the photos taken between two dates and these photos are displayed in the "best match" section of image area 100 (page 8, lines 4-14).

Last but not least, Fig. 1 and Fig. 3 show left and right scrolling arrows included in the left and right corners of the timeline.

Therefore, the examiner respectfully submits that Rothmuller teaches that a search on timeline criteria will return photos including at least "best match" photos and "close match" photos wherein "best match" photos are photos taken between two dates and "close match" photos are photos taken before the first date and after the second date. Activating the left or right scrolling arrows will move the timeline to the left or right accordingly to display in the image area new "best match" photos which are previously "close match" photos.

C. Arguments Regarding the Rejection of Independent Claim 29:

Appellant argues Rothmuller does not disclose "individually presenting the media file as a media file representation in a date column of the media view in accordance with the determination of the manner of representation" since according to Appellant, Rothmuller teaches "displaying images associated with a search in an image area, the image area being associated with the search and not with a date". The Examiner respectfully disagrees since Rothmuller teaches in lines 12-20 of page 2 that the search criteria can include the date the photos were taken. Therefore, Appellant's statement "the image area being associated with the search and not with a date" is incorrect. Appellant further argues that Rothmuller methods "inhibit chronological browsing for specific media files" due to lacking lack the individual presentation of media file representations within date columns. The Examiner respectfully disagrees. Since Rothmuller teaches in lines 5-9 of page 3 that "the timeline displays not only the temporal distribution of objects in the database over the indicated time period, but also the temporal distribution of all objects in the database matching the specified tag search criteria over the indicated time period", the Examiner respectfully submits that Rothmuller teaches chronological browsing for specific media files and individual presentation of media file representations within a date column.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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